

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**RONALD PROKUPEK,**

**Defendant.**

**CASE NO. 8:08CR183**

## TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) in this case. The government has not objected to the PSR. The Defendant adopts the PSR in his sentencing memorandum with the exception that he anticipates that he will be safety valve eligible; therefore, this “exception” is treated as an objection. Also in the sentencing memorandum, the Defendant includes a motion for downward departure or deviation.<sup>1</sup> (Filing No. 107.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Defendant's objection to the lack of an adjustment for the safety valve will be heard at sentencing, and he has the burden of proof by a preponderance of the evidence.

IT IS ORDERED:

1. The Defendant's objection (Filing No. 107) to the PSR will be heard at sentencing;
2. Otherwise, the parties are notified that my tentative findings are that the PSR is correct in all respects;

<sup>1</sup>Defense counsel is advised that a request for a departure, deviation or variance should be filed as a motion.

3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;

4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 28<sup>th</sup> day of January, 2010.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge